

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEBRASKA

JUSTIN GARDNER,

Petitioner,

vs.

STATE OF NEBRASKA,

Respondent.

8:17CV390

**MEMORANDUM
AND ORDER**

This matter is before the court on what the court construes as a motion for reconsideration ([filing no. 8](#)) and a motion for extension ([filing no. 9](#)) filed by Petitioner Justin Gardner. For the reasons set forth below, both motions are denied.

I. MOTION FOR RECONSIDERATION

Petitioner asserts that his habeas petition is meritorious and the court's denial of his previous motion for relief from judgment (*see* [filing no. 7](#)) was in error because Petitioner is "challenging a 'judgment of conviction' entered in State of Nebraska v. Gardner, case number: CR16 3314, not case number: CR15 2366." ([Filing No. 8.](#)) The habeas petition filed in this case clearly states that the judgment being challenged is "CR15 2366." ([Filing No. 1 at CM/ECF p.1.](#)) In any case, Petitioner has filed a separate habeas petition challenging his conviction in "CR16 3314." (*See* 8:18CV46). Accordingly, Petitioner's motion for reconsideration ([filing no. 8](#)) is denied.

II. MOTION FOR EXTENSION

Liberally construed, Petitioner asks for an extension of time to file an appeal in this case. ([Filing No. 9 at CM/ECF p.1.](#)) Rule 4 of the Federal Rules of Appellate Procedure requires a party to file a notice of appeal within 30 days after

the challenged judgment is entered. [Fed. R. App. P. 4\(a\)\(1\)](#). Rule 4(a)(5) allows a party to move the district court to extend the time to file a notice of appeal if “(a) he moves no more than thirty days after the original thirty day deadline has passed, and (b) he shows good cause.” [*Pugh v. Minnesota*, 380 Fed. Appx. 558, 559 \(8th Cir. 2010\)](#) (emphasis added). This case was dismissed without prejudice on December 5, 2017, after Petitioner failed to pay the filing fee or submit a motion to proceed in forma pauperis. Petitioner’s motion for an extension of the time to file an appeal ([filing no. 9](#)) is untimely and is, therefore, denied.

IT IS THEREFORE ORDERED that the motion for reconsideration ([filing no. 8](#)) and motion to extend ([filing no. 9](#)) are denied.

Dated this 2nd day of April, 2018.

BY THE COURT:

s/ *Richard G. Kopf*
Senior United States District Judge